UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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DR. PAUL SELINGER and MARSHA SELINGER,

Plaintiffs,

-against-

THE CITY OF NEW YORK, ROBERT M. MORGENTHAU, in his individual and official capacity as District Attorney, KATHRYN QUINN, in her individual and official capacity as Assistant District Attorney, DETECTIVE WILLIAM GREENE, in his individual and official capacities, LIEUTENANT ANGELO CARBONE in his official and individual capacities, and DETECTIVES and/or POLICE OFFICERS JOHN/JANE DOES 1-5, in their individual and official capacities,

Defendants.

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DEFENDANT'S STATEMENT OF UNDISPUTED FACTS PURSUANT TO LOCAL CIVIL RULE 56.1

08 CV 2096 (RMB)

Pursuant to Local Rule 56.1(a) of the Local Civil Rules of the United States District Court for the Southern District of New York, Defendants the City of New York and former Detective William Greene respectfully submit this statement of material facts as to which they contend there is no genuine issue to be tried.

1. On March 3, 2008, plaintiffs filed the above-captioned matter. *See* Exhibit A, Docket Sheet, Docket No. 1.
2. On August 1, 2008, plaintiffs filed their first amended complaint, but did not add any additional parties. Exhibit A, Docket No. 17.
3. On August 22, 2008, plaintiffs filed their second amended complaint, but did not add any additional parties. Exhibit A, Docket No. 26; Exhibit B, Second Amended Complaint.

4. On December 10, 2008, all defendants filed a joint motion to dismiss the second amended complaint. Exhibit A, Docket No. 34.
5. On June 30, 2009, the Court granted defendants' motion in part, dismissing all claims against Assistant District Attorney Quinn and District Attorney Morgenthau. Exhibit A, Docket No. 40.
6. The Court permitted plaintiffs to proceed with their claims under section 1983 for false arrest and malicious prosecution and state law claims for malicious prosecution, abuse of process, loss of consortium, and negligence/gross negligence. Exhibit A, Docket No. 40.
7. Plaintiff Paul Selinger has a doctorate in dental medicine, also known as a D.M.D. Exhibit C, Deposition of Paul Selinger at 9:20-21.
8. Plaintiff Paul Selinger examined patients for Omni Medical Care for four hours per week for approximately 14 months, from approximately December 2003 to February of 2005. Exhibit C, 11:15-12:2.
9. Plaintiff Paul Selinger was hired to examine accident victims and make his personal determination as whether he felt they were suffering from temporal mandibular dysfunction (TMJ). Exhibit C, 15:19-21.
10. On August 16, 2004, plaintiff Paul Selinger examined a person presenting as Igor Gabjilov. Exhibit C, 41:3-9; Exhibit D, Initial Comprehensive Exam.
11. Plaintiff Paul Selinger diagnosed the person presenting as Igor Jabilov with clustered headaches, disc displacement, TMJ disorder, myospasm and arthralgia. Exhibit C, 42:1-4; Exhibit D at 3.
1. UC 5604 is currently employed by the New York City Police Department as an undercover detective. Exhibit E, Declaration of UC 5604, ¶1

2. In 2004, UC 5604 worked in cooperation with Det. William Greene as an undercover detective investigating OMNI Medical, in Queens, NY. Exhibit E, Declaration of UC 5604, ¶3
3. During that assignment, UC 5604 operated under the pseudonym "Igor Goblijov." Exhibit E, Declaration of UC 5604, ¶4
4. As Igor Goblijov, UC 5604 posed as the victim of a car accident and sought medical evaluation and treatment at OMNI Medical. Exhibit E, Declaration of UC 5604, ¶5
5. UC 5604 gave OMNI Medical insurance information relating to a pretext policy so that NYPD detectives could monitor subsequent billing. Exhibit E, Declaration of UC 5604, ¶6
6. At the time UC 5604 sought medical evaluation and treatment at OMNI Medical, he had no known medical conditions. Exhibit E, Declaration of UC 5604, ¶7
7. On one occasion, UC 5604 was examined by Dr. Paul Selinger. Exhibit E, Declaration of UC 5604, ¶8
8. Dr. Selinger examined UC 5604 for approximately ten minutes. Exhibit E, Declaration of UC 5604, ¶9
9. Dr. Selinger asked UC 5604 if he had any jaw pain and UC 5604 replied no. Exhibit E, Declaration of UC 5604, ¶10-11.
10. Dr. Selinger diagnosed UC 5604 with: cluster headaches, displacement, TMJ disorder, Internal Derangement of TMJ Apparatus, Mospasm, and Arthralgia. Exhibit E, Declaration of UC 5604, ¶13
11. To the best of his knowledge, UC 5604 did not and does not have any of these conditions. Exhibit E, Declaration of UC 5604, ¶14

12. Some time after the examination by Dr. Selinger, billing records were received from Traveler's Insurance indicating that UC 5604 had received therapy treatments for TMJ disorder. Exhibit E, Declaration of UC 5604, ¶15
13. UC 5604 never received any such therapy. Exhibit E, Declaration of UC 5604, ¶16
14. UC 5604 does not know the location of any of these billing records. Exhibit E, Declaration of UC 5604, ¶17
12. Based on a review of the billing records and the examination UC 5604 received by Dr. Selinger, UC 5604 informed Det. William Greene and ADA Quinn that the billing records were fraudulent. Exhibit E, Declaration of UC 5604, ¶12
15. In 2004, William Greene was assigned as the lead detective on a large scale insurance fraud case involving OMNI Medical in Queens, New York. Exhibit F, Declaration of William Greene, ¶5
16. That investigation involved many individuals and ultimately led to the indictment of many individuals. Exhibit F, Declaration of William Greene, ¶6
17. One of the individuals who was indicted as a result of the investigation was Dr. Paul Selinger. Exhibit F, Declaration of William Greene, ¶7
18. Dr. Paul Selinger was one of the medical professionals working at OMNI Medical. Exhibit F, Declaration of William Greene, ¶8
19. Working with Traveler's Insurance Company, a pretext insurance policy was created for Igor Goblijov. Exhibit F, Declaration of William Greene, ¶11
20. On at least 20 occasions, Igor Goblijov met with a variety of medical providers at OMNI Medical. Exhibit F, Declaration of William Greene, ¶13

21. On these 20 occasions, William Greene would monitor the meetings through an audio transmitter secreted on Igor Goblijov Exhibit F, Declaration of William Greene, ¶14

22. On at least one occasion, Igor Gobjilov met with, and was examined by, Dr. Paul Selinger. Exhibit F, Declaration of William Greene, ¶15

23. Subsequent to the examination, NYPD received billing records through the pretext policy that did not match up with the treatment Igor Goblijov received. Exhibit F, Declaration of William Greene, ¶16

24. William Greene does not recall the specific discrepancies between the treatment and the billing records. Exhibit F, Declaration of William Greene, ¶17

25. William Greene conferred with UC 5604 who confirmed that there were discrepancies. Exhibit F, Declaration of William Greene, ¶18

26. ADA Quinn applied for an arrest warrant, which she obtained. Exhibit F, Declaration of William Greene, ¶20

27. William Greene had no direct involvement in obtaining the arrest warrant. Exhibit F, Declaration of William Greene, ¶21

28. ADA Quinn made the determination to prosecute Dr. Paul Selinger. Exhibit F, Declaration of William Greene, ¶22

29. Once the arrest was made pursuant to the warrant, William Greene had no further involvement other than testifying at Grand Jury. Exhibit F, Declaration of William Greene, ¶23

30. William Greene does not recall whether he gave any testimony concerning Dr. Paul Selinger at Grand Jury. Exhibit F, Declaration of William Greene, ¶24

13. Plaintiff Paul Selinger authorized Omni Medical Care to make a rubberized image of his signature. Exhibit C, 21:9-11.

14. Plaintiff Paul Selinger provided more than one signature for use in creating a rubber stamp of his signature. Exhibit C, 21:25-22:4.

15. Plaintiff Paul Selinger was represented by Isabelle Kirshner, Esq., in the criminal matter. Exhibit G, Declaration of Isabelle Kirshner in support of Dr. Selinger's Omnibus Motion.

16. Ms. Kirshner represented to the criminal court that Dr. Selinger had been "used" and "duped" by management. Exhibit G, ¶4.

17. Ms. Kirshner represented to the Court that "Dr. Selinger would testify that management forged his name, via a rubber or plastic stamp, on bills seeking payment in this case. All the bills submitted by management in [sic] contained a signature stamp of Dr. Selinger. . ." Exhibit G, ¶4.

18. After legal proceedings had been instituted against plaintiff Paul Selinger, he became aware that his signature had been used for billing purposes. Exhibit C, 23:1-4.

19. On March 16, 2005, the Honorable Harold Cohen issued an arrest warrant for the arrest of plaintiff Paul Selinger. Exhibit H, Arrest Warrant.

20. The day before plaintiff was arrested, he was contacted by a detective who told him to obtain a criminal attorney and to surrender himself for arrest. Exhibit C, 24:25-25:8.

21. The following day, plaintiff Paul Selinger surrendered himself for arrest at approximately 8:00 am. Exhibit C, 32:11-14.

22. On March 22, 2005, pursuant to the arrest warrant, Det. Greene arrested plaintiff Paul Selinger at the Office of the District Attorney at One Hogan Place. Exhibit I, Arrest Report.

23. Plaintiff Paul Selinger's counsel was present when he surrendered. Exhibit C, 32:17-18.

24. Plaintiff Paul Selinger understood what the charges against him were. Exhibit C, 34:24-35:2.

25. At approximately 4:00 pm the same day, plaintiff Paul Selinger was arraigned. Exhibit C, 34:11-14.

26. Plaintiff Paul Selinger was released on bail. Exhibit C, 36:4-5.

27. The grand jury subsequently indicted plaintiff and a number of other doctors and health care providers for insurance fraud. Sec. Am. Complaint: ¶¶ 76, 78, 98; Exhibit J, Indictment.

Dated: New York, New York

August 11, 2010

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